

ICTR-01-76-T
25-06-2004
(2221-2218)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov
Judge Emile Short

Registrar: Adama Dieng

Date: 25 June 2004

JUDICIAL RECORDS
ICTR
2004 JUN 25 A 11:50

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

**DECISION ON DEFENCE REQUEST FOR LEAVE TO APPEAL "DECISION ON
DEFENCE MOTION FOR EXTENSION OF TIME" AND ORAL DECISION**

Office of the Prosecutor

William T. Egbe
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”);

SITTING as Trial Chamber I, composed of Judge Jai Ram Reddy, presiding, Judge Sergei Alekseevich Egorov, and Judge Emile Short;

BEING SEIZED OF the “Defence Request, pursuant to Rule 72(B)(ii) (RPE), for Leave to Appeal the Trial Chamber’s Written Decision, ‘Decision on Defence Motion for Extension of Time,’ 4 May 2004 and Oral Decision, Rendered 13 May 2004”, filed on 17 May 2004;

CONSIDERING the Prosecution’s Response, filed on 24 May 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused was confirmed on 8 January 2002. The amended Indictment was filed on 27 January 2004, the second amended Indictment was filed on 10 May 2004, and the trial is scheduled to commence on 16 August 2004. On 28 April 2004, the Defence filed a motion seeking a suspension of the time limit for filing its reply to the Prosecution’s response to the Defence’s motion regarding defects in the form of the Indictment, until the French translation was served on the Defence. The motion was denied on 4 May 2004; Lead and Co-Counsel, one English-speaking, the other French-speaking, were urged to cooperate on language issues. In the Pre-Trial Conference on 13 May 2004, the same issue relating to language was raised by the Defence and rejected by the Chamber on the same day in an oral decision.

SUBMISSIONS

2. The Defence seeks leave to appeal the Decision filed on 4 May 2004, and the oral decision of 13 May 2004 under Rule 72(B)(ii). On the issue of language raised in both decisions, the Defence cites communication difficulties between Counsel in Africa and North America, and submits that even without such logistical problems, Counsel are not able to comprehend legal issues not in their first language, and are therefore unable to cooperate in the manner the Chamber has decided. The Defence argues that it would be a violation of the Accused’s rights if he were not provided with English and French copies of all pleadings. Additionally, the Defence seeks a waiver of the time limit for appeal of the 4 May Decision, as it was received by Co-Counsel on the day she was leaving Arusha and she was unable to consult with Lead Counsel until 10 May 2004. The Defence contends that the trial should not commence until the appeals have been decided.

3. The Prosecution objects to the motion and submits that the Defence has not shown how overturning the 4 May Decision would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, nor how an immediate resolution by the Appeals Chamber may materially advance the proceedings. Moreover, certification would be granted only in exceptional circumstances, and that the Defence has not demonstrated such

circumstances. The Prosecution contends that arguing the merits of the appeal, as the Defence has done, is inappropriate and only arguments relating to the criteria for certification should be addressed. Turning to the translation issue, the Prosecution argues that the Rules do not impose an absolute duty to translate all documents into the Accused's language, and that translation should be done on a case-by-case basis where the relevance of the document has been determined. With respect to the 13 May Oral Decision, the Prosecution also argues that the requirements for certification have not been met and adopts its oral arguments made on 13 May 2004.

DELIBERATIONS

4. The decisions sought to be appealed are not decisions on preliminary motions according to Rule 72(A). Appeals from decisions on other motions are provided for by Rule 73(B) and (C), which state as follows:

(B) Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

(C) Requests for certification shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

If certification is given, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify.

4 May Decision

5. The motion for certification of appeal of the 4 May Decision is out of time as it was filed more than seven days from the filing of the impugned decision. Under Rule 73, there is no provision for a waiver upon a showing of good cause, as under Rule 72(G) which the Defence erroneously cites. Therefore, the certification motion with respect to the 4 May Decision is time-barred.

13 May Oral Decision

6. The portion of the impugned Decision relating to translation states as follows:

The Defence seeks to have a postponement of trial until all documents in English have been translated into French, as that is the language of the Lead Counsel and the Accused. The Chamber notes that the practice in the Tribunal is that Lead and Co-Counsel, who

between them have a command of both official languages of the Tribunal, co-operate with one another to have documents translated themselves. In addition, the Chamber notes that the unredacted witness statements have been disclosed in both French and English. To require translation of all motions, responses, correspondence, and other documents, would place an impossible burden on the Translation section of the Tribunal. The Chamber will consider ordering or facilitating the translation of specific documents on a case-by-case basis in the interests of justice. In any event, in the absence of a specific showing of how the Defence will be prejudiced if a particular document is not translated, the Chamber does not find this to be an adequate ground for postponing trial.

7. The Defence, in its motion, has not applied itself to the threshold requirements for certification, that is, that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and an immediate resolution of which by the Appeals Chamber may materially advance the proceedings. The motion states: “[a]n appellate decision on these issues would ‘significantly affect the fair and expeditious conduct of the proceedings’ and the ‘outcome of the trial’. Indeed, an immediate resolution of the issues would not only ‘materially advance the proceedings,’ but possibly avoid future delays since the issues raised are material to the entire trial.” This is merely a re-statement of the Rule which does not address the substantive tests to be met for certification. The Defence has not shown how the translation issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and that an immediate resolution of which by the Appeals Chamber may materially advance the proceedings.

8. Finally, the Defence requests that trial proceedings commence only after the interlocutory appeals have been decided. With respect to the appeals sought in this motion, the request is moot as certification has been denied. With respect to the appeals pending before the Appeals Chamber, the Chamber considers that there is no legal basis for postponing the trial pending an interlocutory appeal. In any event, the request is likely to be moot given that the trial will commence on 16 August 2004, by which time the appeals would have been decided.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

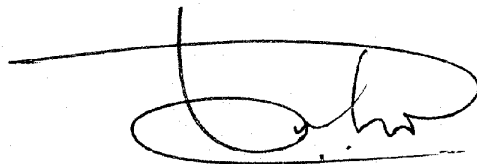
Arusha, 25 June 2004



Jai Ram Reddy
Presiding Judge



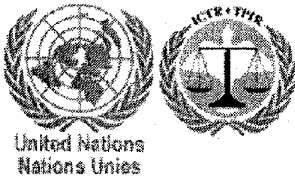
Sergei Alekseevich Egorov
Judge



Emile Short
Judge

(Seal of the Tribunal)





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burris
From:	<input checked="" type="checkbox"/> Chamber <i>Gulhan</i> (name)	<input type="checkbox"/> Defence (name)	<input type="checkbox"/> Prosecutor's Office (name)	<input type="checkbox"/> Other: (name)
	Case Name: The Prosecutor vs. <i>Suba</i>		Case Number: ICTR- 01-76-1	
Dates:	Transmitted: <i>25/6/04</i>		Document's date: <i>25/6/04</i>	
No. of Pages:	<i>4</i>	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	<i>Decision -- leave to appeal -- Oral Decision</i>			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is over-seeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is over-seeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: